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98TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
No. 98-205

REPORT

OF THE

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

ON THE INQUIRY UNDER HOUSE RESOLUTION 12, 98TH CONGRESS, 1ST SESSION

INTO CERTAIN

NARCOTICS INVESTIGATIONS BY THE UNITED STATES CAPITOL POLICE

MAY 18, 1983.—Referred to the House Calendar and ordered to be printed

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LETTER OF SUBMITTAL

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., May 18, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, U.S. House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Pursuant to House Resolution 12 of the 98th Congress, I herewith submit the attached Report from the Committee on Standards of Official Conduct.

Sincerely,

LOUIS STOKES,
Chairman.

House Calendar No. 32

98TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT No. 98–205

INQUIRY UNDER HOUSE RESOLUTION 12, 98TH CONGRESS, 1ST SESSION INTO CERTAIN NARCOTICS INVESTIGATIONS BY THE UNITED STATES CAPITOL POLICE

MAY 18, 1983.—Referred to the House Calendar and ordered to be printed

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Mr. STOKES, from the Committee on Standards of Official Conduct, submitted the following

REPORT

I. INTRODUCTION

On July 13, 1982, the House agreed to House Resolution 518, 97th Congress, and on January 3, 1983, the House agreed to House Resolution 12, 98th Congress. These resolutions authorized and directed this Committee to conduct a full and complete inquiry and investigation of

(1) alleged improper or illegal sexual conduct by Members, officers, or employees of the House;

(2) illicit use or distribution of drugs by Members, officers, or employees of the House; and

(3) the offering of preferential treatment by Members, officers, or employees of the House to employees of the House including congressional pages, in exchange for any item referred to in subclause (1) or (2).

Shortly after the adoption of H. Res. 518, 97th Congress, this Committee named Joseph A. Califano, Jr., as Special Counsel to conduct the investigation and he has continued to serve as Special Counsel in the 98th Congress.

II. CAPITOL POLICE INVESTIGATION

In the course of its inquiry under H. Res. 518 and H. Res. 12, the Committee received certain allegations regarding the conduct of the U.S. Capitol Police in carrying out a 1980 investigation of illegal drug activity on Capitol Hill. In July, 1982, an officer of the United States Capitol Police met with Representative Louis Stokes, the Chairman of the Committee, and alleged that the Capitol Police had not pursued important information he had obtained regarding illegal drug activity. The Chairman referred the officer to the Special Counsel, with instructions to investigate these allegations. On September 14, 1982, the Special Counsel presented a summary of the allegations to the Com-

mittee, and the Chairman confirmed the Committee's directive to carry out a thorough investigation of these allegations. The investigation was carried out pursuant to an agreement between this Committee and the Senate.

III. The Committee's Actions

The Special Counsel has completed his investigation of the allegations concerning the Capitol Police drug investigation and has filed his report with this Committee. The Committee approves and adopts the findings, conclusions and recommendations of the Special Counsel's report. The Special Counsel's report is reproduced as an appendix to this Report. Pursuant to the Special Counsel's recommendations, the Committee refers his report to the leadership of the House and Senate and to the Capitol Police Board for appropriate action.

The Committee takes particular note of certain findings of the Special Counsel. First, the Special Counsel found that the Capitol Police's 1980 drug investigation involved no evidence of illicit use or distribution of drugs by House Members or professional staff.

Second, the Committee endorses the conclusion by the Special Counsel that the failure of the Capitol Police to pursue leads of illicit drug use and distribution by non-professional employees and particularly by Capitol Police officers "constitutes a grave abdication of responsibility." The Committee believes that the Special Counsel's findings with respect to the capacity of the Capitol Police to carry out drug investigations are serious. The enforcement, within the Capitol enclave, of laws passed by the Congress ought to be a high priority of the Congress. The evidence that the Capitol Police force lacks the capacity to carry out a serious investigation of illicit drug use and distribution requires attention. The Committee recommends that the Capitol Police Board and the leadership of the Congress consider what institutional changes are necessary to remedy these shortcomings. The Committee also recommends that the Capitol Police Board consider whether any disciplinary action is appropriate in individual cases for the failure to follow up leads from the 1980 investigation, that are reported by the Special Counsel.

Third, the Committee, along with the Special Counsel, views the failure to pursue allegations of drug use and distribution by Capitol Police officers as "particularly serious and troublesome." Any illegal activity among police officers has a corrupting influence far beyond the illegal act itself. The Committee recommends that the Capitol Police Board pay particular attention to the failure of the Capitol Police to investigate allegations concerning three of its officers at the time those allegations were received.

Fourth, the Committee also recommends that the Capitol Police Board consider whether disciplinary action should be taken in connection with the destruction of Capitol Police documents and the conflicts in testimony identified in the Special Counsel's report.

Statement Under Clause 2(b) of Rule X

The Committee's oversight findings and recommendations are stated above.

No budget statement is submitted.

This report was adopted by a show of hands, 11 yeas, 0 nays, on May 18, 1983.

APPENDIX

REPORT OF THE SPECIAL COUNSEL ON THE INQUIRY INTO CERTAIN NARCOTICS INVESTIGATIONS BY THE UNITED STATES CAPITOL POLICE

Summary and Conclusions

Early in 1980, the United States Capitol Police conducted an investigation of narcotics activity in a Senate office building annex "break" room, a lounge for service and clerical employees. The Capitol Police who conducted the investigation arrested ten individuals, seven laborers and three clerks, for possession of marihuana and phencyclidine, or PCP, a dangerous hallucinogenic drug. They also developed leads relating to other illegal narcotics activity within Capitol buildings and grounds, by nonprofessional congressional employees and some members of the Capitol police force, but they made no other arrests.

In the summer of 1982, the national news media reported that the Justice Department was looking into allegations of illegal drug activity by Members of Congress and congressional staff. On July 27 and 28, 1982, a local television station in Washington, D.C., WDVM–TV, broadcast a story charging that Capitol Police "may have been close to uncovering the [drug] scandal" two years before. The July 27 WDVM–TV story asserted that:

"Eyewitness News has learned from sources that Capitol Hill Police had evidence of alleged widespread cocaine activity as far back as two years ago. There was a small investigation and some arrests were made. But then suddenly the officers assigned to the case were reassigned as well as the deputy police chief. Eyewitness News has obtained copies of confidential Capitol Hill Police reports from that drug probe, reports in which some Capitol Hill employees named not only alleged drug users but their suppliers. The workers admitted to investigators that they have used cocaine and other drugs during working hours."

The television news report displayed excerpts from documents written during the 1980 investigation that led to the ten arrests.

At his request, an officer who had participated in the 1980 investigation, Sergeant Ronald Richardson, met in late July 1982, with Representative Louis Stokes, the Chairman of the Committee on Standards of Official Conduct, and made certain allegations. Chairman Stokes referred Richardson to the Special Counsel, with instructions to investigate his allegations. Richardson and his colleague from the 1980 investigation, Officer Linwood Bennett, claimed to have information concerning narcotics use on Capitol Hill. They said that they had been investigating such use when they were reassigned. They believed that, after their transfers, the investigation was not forcefully pursued.

Neither the WDVM–TV report nor Officers Richardson and Bennett specifically alleged that the 1980 narcotics investigation involved Members of Congress. Nevertheless, the contemporaneous press reports of allegations of drug use by Members and of termination of a Capitol Police drug investigation left the impression that the investigation may have been terminated to protect Members.

At the Committee's request, the Special Counsel has conducted an extensive inquiry into the 1980 Capitol Police narcotics investigation and its termination. Every Capitol Police officer who did any significant work on the investigation has been interviewed; most have been deposed. The hierarchy of the police responsible for supervising the investigation, up to and including the Chief of Police, has been deposed. All available records of the Capitol Police relating to this investigation have been obtained and examined. Based on the evidence obtained, the Special Counsel has reached the following conclusions:

1. There is no evidence that implicates, in any way, any Member of the House of Representatives in any drug investigation conducted by the Capitol Police between January, 1980 and July, 1982, the period covered by this aspect of the Special Counsel's inquiry.

2. There is no evidence that implicates, in any way, any House professional staff in any drug investigation conducted by the Capitol Police between January, 1980 and July, 1982.

3. The narcotics investigation conducted by the Capitol Police in 1980 involved allegations of drug use and distribution by non-professional congressional employees on Capitol Hill and some members of the Capitol Police force.

4. The 1980 investigation produced substantial leads which were not pursued concerning use and sale of drugs by non-professional congressional employees and by three members of the Capitol Police force.

5. The failure to pursue the leads uncovered in the 1980 investigation raises serious questions about the handling of that investigation and about the competence of the Capitol Police to conduct serious criminal investigations in the drug area. The evidence is insufficient to conclude that there was a conscious effort to obstruct the 1980 investigation. But the failure of certain Capitol police to follow up leads and vigorously to pursue the 1980 drug investigation constitutes a significant abdication of responsibility. The failure to act is particularly serious because some of the abandoned leads involved members of the Capitol Police force. The Capitol Police Board should consider what institutional changes are required to prevent repetition of these failures in the future, and whether disciplinary action is appropriate. The Special Counsel recommends that the Committee refer this matter to the leadership of the House and Senate and the Capitol Police Board.

6. Records relating to some Capitol Police drug investigations were destroyed before the Special Counsel began this investigation. The evidence is insufficient to conclude that the records destroyed contained information important to the Committee's investigation of illicit use or distribution of drugs. Nevertheless, destruction of records in at least one instance appears wholly improper, and may warrant serious disciplinary action. The Special Counsel recommends that the Committee refer this matter to the Capitol Police Board for appropriate disciplinary action.

7. There is conflict in the testimony about which officers were informed of the destruction of certain Capitol Police drug records and when they were informed. There are also conflicts as to the source of rumors regarding the destruction of documents at the time of the Special Counsel's August 2, 1982 request to the Capitol Police for records relating to investigations of illegal drug activity and sexual misconduct. The conflicts in testimony are serious, but whether there is sufficient evidence to merit criminal prosecution for perjury is doubtful. Yet such conflicts in testimony involving ranking members of the Capitol Police raise serious questions that should be considered by the Capitol Police Board.

I. Scope and Conduct of the Special Counsel's Investigation

The jurisdiction of the House Committee on Standards of Official Conduct extends to Members, officers, and employees of the House. Approximately 650 Capitol Police officers are employees of the House; approximately 550 others are employees of the Senate. Some police officers on the Senate payroll carry out assignments relating to the House, and vice-versa. The entire force is subject to the jurisdiction of the three-member Capitol Police Board, comprised of the Sergeants at Arms of the House and Senate and the Architect of the Capitol. The 1980 Capitol Police drug investigation focused initially on service and clerical employees of the Senate.

To permit a thorough investigation of how the Capitol Police conducted the 1980 drug inquiry, Committee Chairman Stokes and Senate Majority Leader Howard Baker agreed that the Special Counsel would be free to conduct the inquiry in both Houses of Congress. The Senate Majority Leader agreed that Senate employees could be interviewed and Senate documents examined. The House Committee Chairman agreed to turn over to the Senate Ethics Committee any information developed concerning employees of the Senate. This investigation has been carried out under the terms of that agreement, expressed in the exchange of letters attached as an appendix to this report.

In light of allegations made by Officers Richardson and Bennett and by the television news report, the Special Counsel sought to determine (a) whether the Capitol Police had developed information or evidence concerning illegal drug activities on Capitol Hill that should be incorporated into the basic investigation in this area, and (b) whether the Capitol Police had covered up or failed properly to pursue information concerning illegal drug activities.

In carrying out this investigation, the Special Counsel's office questioned all members of the Capitol Police who played roles of any significance in the 1980 drug investigation, a number of subjects of that investigation, and others believed to have relevant information. Members of the Capitol Police Criminal Investigations Division who have conducted drug investigations since 1980 were also interrogated. In total, more than 40 witnesses were questioned, many two or more times. Investigators and attorneys devoted some 2,000 hours of time to the effort.

The Special Counsel's office conducted fourteen depositions, including those of the Chief of Police, two Deputy Chiefs of Police, the head of the Criminal Investigations Division, and the two Capitol

Police officers who alleged their investigation was improperly terminated.

The Special Counsel made two extensive document requests of the Capitol Police. On August 2, 1982, the Special Counsel requested all files for the previous five years concerning illicit use or distribution of drugs relating to the House of Representatives. On December 8, 1982, pursuant to the agreement between Chairman Stokes and Senate Majority Leader Baker, the Special Counsel requested:

"Any and all documents, investigative notes, or other written material, recordings, photographs, audiotapes, videotapes, films or other records of the United States Capitol Police (USCP), relating to any investigation or other activity conducted or assisted by the USCP, during the period January 1, 1980 to the present, involving allegations of illegal possession, use, or distribution of narcotics by any person."

In order to avoid any risk of exposure of ongoing investigations, the Special Counsel excluded from this request records of investigations initiated since July 13, 1982 and in progress.

More than 1,000 pages of documents were received in response to these requests. The Capitol Police also made available videotapes and sound recordings taken in connection with the 1980 investigation.

This report concerns the allegations of a cover-up surrounding the 1980 drug investigation. Investigators and lawyers are continuing their review of allegations and materials relevant to the basic drug investigation.

II. The Capitol Police

The Capitol Police have the responsibility to "police the United States Capitol Buildings and Grounds," 40 U.S.C. § 212a. Members of the Capitol Police are empowered to make arrests within the Capitol grounds for any violation of federal law or laws of the District of Columbia. Members of the Metropolitan Police of the District of Columbia are also empowered to make arrests within the Capitol grounds, but only with consent of the Capitol Police Board. Id.

With about 1,200 officers, the Capitol Police force ranks among the 30 largest in the United States. The jurisdiction of the Capitol Police covers approximately 187 acres, a work force of about 22,000, and thousands of visitors. According to FBI statistics, the average ratio of police officers to residents in American cities with populations the size of the Capitol work community is 1.7 officers for every 1,000 residents. Within the Capitol buildings and grounds, the ratio of police to workers is 30 times higher—approximately 54 officers for every 1,000 congressional employees. The city of San Diego, with a population of nearly 900,000 and a geographic area of 20,794 acres (323.5 square miles) has a police force of 1,300 officers, only slightly larger than the Capitol Police. But Capitol Police also perform building security functions typically carried out by privately employed security guards in most cities.

Of the 1,200 members of the Capitol Police, as of March 2, 1982, only seven were assigned to the Detective Branch of the Criminal Investigations Division. That branch is responsible not only for drug investigations, but for investigating lost and stolen property reports and any criminal matters that arise. The seven-person branch handles

approximately 650 cases each year. Everyone questioned on the subject, including the Chief of Police, believed that the number of police assigned to criminal investigations is inadequate.

III. The 1980 Drug Investigation

Before considering in detail allegations that have been made concerning Capitol Police actions, it is necessary to set forth the facts of the 1980 investigation and the problems that developed during its course and after its conclusion.

A. CHRONOLOGY

In December 1979, Capitol Police Officers Ronald Richardson and Linwood Bennett met with Deputy Chief William W. Kirby. Both officers were then privates serving as uniformed patrolmen—Richardson in a scout car and Bennett on foot patrol. Richardson and Bennett reported to Kirby that they had observed a suspicious pattern of activity among certain laborers employed by the Senate and the Architect of the Capitol. Richardson and Bennett believed these individuals were selling narcotics within Capitol buildings and grounds. In January 1980, Kirby authorized the two policemen to leave their regular uniformed patrol. He told them to wear plainclothes and to place the suspected individuals under surveillance.

Richardson and Bennett followed a group of eight persons for a period of five to six weeks. They made surreptitious still photographs of the group. Their surveillance records for this period indicate that they never observed any of these individuals in possession of narcotics, and that they never developed probable cause for arrest.

Sometime prior to January 23, 1980, Richardson and Bennett shifted most of their attention from the original suspects to activities in Room 15 of the Senate office building annex at 128 C Street, N.E. The officers collected residue from ashtrays and wastebaskets in the room, and turned the residue over to the Drug Enforcement Agency laboratory for analysis. The laboratory found marijuana and PCP in the residue.

Based on this evidence, on February 15, 1980, a District of Columbia Superior Court judge issued a warrant to conduct videotape surveillance of Room 15.[1] Deputy Chief Kirby assigned Sergeant Larry Lockhart, head of the Capitol Police Crime Scene Search team, to supervise the investigation, and two technicians, Detectives Michael Jarboe and Ray Eaton, to operate videotape equipment clandestinely set up in an adjacent room. Kirby also assigned Officers William Dirks and Elroy Shook to the drug investigation.

During the next six weeks, Eaton and Jarboe videotaped employees smoking marjuana cigarettes in Room 15. The investigating team collected residue from the ashtrays in the room at the end of each day. Laboratory tests of the residue found traces of marijuana and PCP. Nothing observed or videotaped was clearly a drug sales transaction.

On March 20 and 27, 1980, Capitol Police arrested ten persons and charged them with possession of illegal drugs in Room 15 of 128 C Street Senate Annex. The individuals arrested were all service and

[1] It is unclear that any such warrant was necessary to conduct the surveillance, since it was conducted on government owned, public premise. However, the Assistant United States Attorney advising the Capitol Police on the case decided that obtaining a warrant would be the prudent course.

clerical personnel. The Office of the U.S. Attorney for the District of Columbia and the courts disposed of these cases in the same manner in which they routinely dispose of similar ones. The U.S. Attorney declined prosecution in one case because the evidence was weak. The defendant was a service employee in Senate office buildings, and there has been no allegation of improper influence in connection with that case. The other nine persons arrested either pled guilty, or were diverted to drug rehabilitation programs through which they would eliminate convictions on their official records. None served any time in prison. All were fired from their jobs on Capitol Hill.

After the arrests, investigators kept certain locations on and off the Capitol grounds under surveillance, where congressional employees allegedly used or purchased narcotics. But they did not obtain evidence sufficient to make additional arrests. In addition, Capitol Police investigators spent several weeks interrogating those arrested and others videotaped in Room 15. The police were probing for more serious drug offenses and the identity of persons distributing narcotics on Capitol Hill. Some of those questioned provided information; some initially agreed to make undercover buys or introduce undercover police officers to drug distributors. However, they eventually declined to cooperate, apparently after consulting counsel or giving the matter further consideration.[2]

Nonetheless, the Capitol Police now had leads and information about a variety of alleged illegal drug activities by non-professional staff on Capitol Hill. They had names of Capitol Hill employees alleged to be selling marijuana, PCP and cocaine to their fellow workers. They had the names of Capitol Police officers alleged to be selling marijuana and using drugs. They had also developed informants who claimed to have heard that employees use, bought, or sold drugs at particular work places within the Capitol complex.

At the time the drug investigation began, the Capitol Police had two deputy chiefs: Kirby was Deputy Chief in charge of all field operations, and James T. Trollinger was Deputy Chief for administration. About six weeks after the 128 C Street arrests, in early May, 1980, Chief Powell, with the concurrence of the Capitol Police Board, created a third Deputy Chief position, to supervise all investigations conducted by the Capitol Police. Powell promoted Gilbert Abernathy to the new position. Abernathy had served under Deputy Chief Kirby as inspector in charge of investigations. In effect, Abernathy continued to supervise the same activities as he had before, but now he reported directly to the Chief of Police, rather than to Deputy Chief Kirby. Kirby lost his jurisdiction over investigative matters, including the drug investigation; he retained jurisdiction over all uniformed officers in the Patrol Division.

Soon after becoming the third Deputy Chief, Abernathy assigned Captain Richard Xander to supervise the ongoing drug investigation. Xander was then and is now the head of the Criminal Investigations Division.

Over the next two months, the team that had worked on the drug investigation gradually disbanded. Detectives Jarboe and Eaton, who

[2] Richardson testified that a number of persons made firm commitments to cooperate which they never withdrew. However, Dirks, Shook, Jarboe and Bennett, other members of the team, testified that the people Richardson named either never agreed to testify or withdrew their agreements.

had been temporarily assigned to conduct video surveillance, were returned to their regular duties on the Capitol Police bomb squad, at their request and that of their commanding officer. Sergeant Lockhart, at his own request, returned to his duties on the Crime Scene Search team.

On May 14, 1980, Deputy Chief Abernathy, in a memorandum to Chief Powell, requested the permanent assignment of Officers Richardson, Bennett and Dirks to the Criminal Investigations Division, for a "long-term" project in which they were then engaged, an apparent reference to the drug investigation. Abernathy testified that he intended that these officers continue to work on the drug investigation for the indefinite future. Chief Powell approved the request on May 15.

About two weeks later, Officer Richardson was promoted from the rank of private to sergeant. It is routine Capitol Police practice for the most junior officers in each rank to receive the least desirable assignments within that rank. Thus, a promotion is normally accompanied by a reassignment to night shift duty within the new rank. In accordance with this policy, Richardson's promotion was accompanied by a transfer back to the Patrol Division, on a night shift.

Officer Bennett reacted to Richardson's transfer by immediately requesting his own return to the Patrol Division. His request was granted. Officer Shook, who had participated in the 128 C Street investigation, was sent outside the Washington area for an eight-week training course in criminal investigations. A few weeks later, Officer Dirks, the last participant in the 128 C Street investigation, was sent to the same training course. Both Shook and Dirks returned from their training courses to new assignments with the Criminal Investigations Division.

In June, 1980, Mark Herbst, a Criminal Investigations Division officer, was assigned to follow-up outstanding drug leads, in addition to his other investigative duties. In December, 1980, Herbst was promoted and transferred to the Patrol Division. Since then, drug investigations have been handled on a case-by-case basis by the five to seven officers assigned to the Criminal Investigations Division.

In July, 1981, Sergeant Richardson and Officer Bennett wrote a letter to the Capitol Police Board, complaining that they had been conducting a drug investigation in 1980 and had been transferred before being permitted to complete it. Their letter cited a "power struggle" which allegedly erupted in the spring of 1980 between Chief Powell and Deputy Chief Kirby. Their letter suggested a link between the transfer of the narcotics investigation out of the jurisdiction of Deputy Chief Kirby, the transfer of Richardson and Bennett, and the failure to make more arrests. As a result of their letter, the Chairman of the Capitol Police Board asked Richardson and Bennett to provide information about current drug activities on Capitol Hill and designated Captain Robert Langley to pursue any leads they furnished. Bennett supplied names of people he believed to be illegal drug users and traffickers on Capitol grounds, and Richardson disclosed a location where he had found physical evidence of drug use. Langley testified that for a variety of reasons he did not pursue this information. He reported to the Board Chairman that Richardson and Bennett had no significant new information. He did, how-

ever, recommend that the Capitol Police develop the capacity to conduct undercover drug investigations. Arrangements were made to place an undercover officer from another police agency in the Capitol complex, but the officer was recognized and the plan to use him aborted.

Since March, 1980, there have been no further arrests as a result of leads developed by Richardson, Bennett, and their colleagues.

B. PROBLEMS OF THE 1980 INVESTIGATION

To the chronology of the 1980 investigation and its after math, it is important to add a description of the deficiencies that characterized the inquiry from the beginning. Those conducting the investigation were not adequately trained and had little or no experience in drug investigations. They lacked appropriate supervision. They failed to develop and put in place workable undercover resources.

These problems were apparent during the investigation conducted by Richardson, Bennett, and their colleagues. Even more serious was the failure to follow up significant leads and information that had been developed about drug activities, some of which potentially implicated members of the Capitol Police force.

1. Lack of investigative experience and training

The Capitol Police officers who conducted the 1980 drug investigation had no experience in their work. They had no significant training in narcotics investigations other than technical training to help recognize various drugs. In fact, the group had little investigative experience of any kind. Early on, they sought assistance from the Morals Division of the Metropolitan Police. Morals Division officers provided advice throughout the investigation, but this assistance could not compensate for the lack of experience of Capitol Police investigators.

Their inexperience led to problems, including a tendency to read possibly innocent behavior as drug related, counterproductive efforts to maintain secrecy, and inefficient use of resources.

To illustrate the first problem, one witness cited two occassions in which individuals were observed on videotape engaging in activity which the investigators, who were unable to overhear any conversation accompanying the transaction, initially believed to be drug sales. The officers involved testified that later interviews and study of the tape indicated that the original incidents might well have been unrelated to drugs: in the first instance, handing over cleaning supplies, and, in the second, making change for a dollar bill.

Those involved in the investigation reported a number of instances of counter-productive secrecy. The officers conducting video surveillance, for example, entered the room where their equipment was located by climbing in the window, to avoid being observed entering the room by the door—even though they entered before 6 a.m., when no one was likely to be in the building. As a result, the window had to be left unsecured overnight, with the extensive video equipment in the room. Moreover, climbing through the window was much more likely to arouse curiosity and suspicion than walking through the door.

Richardson, who had worked on the Senate side of Capitol Hill for many years and was well-known as a policeman, wore disguises in an effort to avoid recognition by subjects of the investigation. At vari-

ous times he dressed as a priest, a construction worker, and a derelict, complete with make up and a false beard. According to his colleagues, these disguises often made him more, rather than less conspicuous.

Finally, the group tended to use their resources inefficiently. Members of the unit themselves, as well as others, said that as many as five investigators would conduct surveillance or run down a lead that could have been handled—and more discreetly—by one or two officers. One investigator described this process:

"Instead of two of us following up this lead while two of us went over on this lead, Richardson wanted everybody kept together. We went out to check a residence, we went as a group. We went as four or three. I know we went out to P.G. County to more or less exchange information to see if they had any files on peoples like [names of subjects], and instead of just two of us going out, four or five of us went out, just about the whole squad went, with the exclusion of Sergeant Lockhart. That was the problem. It was a problem to me then. It is a problem to me now. To me, it is very unprofessional."

After the 128 C Street Senate Annex arrests, the group's inefficient use of resources was exacerbated by efforts simultaneously to follow up a wide variety of disparate allegations, including some relating to activities off the Capitol grounds. Some who participated in the investigation criticized this scattergun approach as unproductive.

2. Lack of appropriate supervision

The group's inexperience was compounded by lack of professional supervision. No one with significant experience in narcotics work was available to oversee the investigation. Sergeant Lockhart of the Crime Scene Search team was primarily a finderprint expert, with only some technical experience and training in identifying illegal drugs. Based on this limited experience, he was designated to supervise the drug investigation, while continuing to serve as head of the Crime Scene Search unit.

But Lockhart never really assumed control of the investigation. All those questioned about the investigation agreed that the driving force was Richardson, then a twelve-year veteran of the Capitol Police. Richardson tended to ignore both Lockhart and then-Inspector Abernathy and report directly to Deputy Chief Kirby. Kirby himself had no investigative experience.

Tensions generated over who was in charge of the investigation impeded it. Even participants agreed that the group needed far better supervision than it received. One investigator raised this issue when asked if higher-ranking officers in the Capitol Police had tried to hinder the investigation in any way.

"*Question.* Did you ever get the impression that you were prevented from following certain leads that should have been followed by someone who wanted to hinder further investigation, from any of your superiors?

"Answer. See, really, we, our superiors really didn't have any control over us. That is what I meant when I said they should have kept a tighter rein on us. They let us do whatever we wanted to do. Wherever we wanted to go, we went.

3. Lack of undercover resources

Successful prosecution for distribution of illegal drugs usually requires a cooperating witness who participated in the transaction. Frequently, that witness is an undercover agent.

In the course of the 1980 investigation, the police team developed some informants, but never had a cooperating witness or undercover police agent make narcotics buys within the Capitol grounds. This inevitably limited the effectiveness of the inquiry.

4. Leads not pursued

Some leads developed in the course of the 128 C Street investigation and its aftermath were based only on speculation, rumor, or association. But others were significant.

A number of witnesses signed statements naming several Capitol Hill employees as distributors of marijuana, PCP and cocaine. Some of those implicated still work as Capitol Hill employees.

One witness signed a statement that he had purchased marijuana from a uniformed private on the Capitol Police force and been offered a purchase of marijuana by a second Capitol Police private. A second witness said that the private implicated by the first witness as having sold the first witness marijuana had also offered to sell the second witness marijuana. Two other witnesses signed statements that a third Capitol Police private purchased drugs from another Capitol Hill employee.

An informant named specific individuals as narcotics dealers in particular work centers that had been the subject of rumor about drug use in the past. This informant volunteered to make undercover buys.

The evidence obtained by the Special Counsel indicates that none of these leads was developed or followed up.

In addition, in 1981, Richardson provided the Capitol Police with information on alleged drug use within the Capitol buildings and grounds. After Richardson and Bennett complained to the Capitol Police Board about their transfers, Captain Langley was assigned to investigate any narcotics leads which they had. Langley testified that because Richardson and Bennett did not give him new information that had not been developed in the course of the 128 C Street investigation, he did not consider their leads significant and did not pursue them. He said that, on instructions from the chairman of the Police Board, he particularly asked about ongoing drug activities by members of the Capitol Police and that both Richardson and Bennett said that, at that time, they knew of none. He did not address the leads outstanding from the 128 C Street investigation itself, because, as he testified, "if it wasn't significant or important then, why should it be now?"

IV. Findings of the Special Counsel

The heart of the allegations relating to the Capitol Police is that, for some illicit reason, an active and promising drug investigation was abruptly and prematurely terminated. The allegations essentially fall into three categories:

That the purpose of the May, 1980 reorganization of the Capitol police was to remove jurisdiction of the drug investigation from Deputy Chief Kirby, so that it could be terminated;

That Sergeant Richardson was transferred for the specific purpose of putting a stop to the drug investigation;

That leads developed in the course of the investigation were not properly pursued after the reorganization and the transfer of Richardson.

The Special Counsel's investigation and conclusions regarding each of these allegations is set out below.

A. THE REORGANIZATION

The creation of a new position of Deputy Chief took effect in May, 1980. This reorganization did affect the drug investigation to some degree. Prior to the reorganization, Officer Richardson had bypassed his immediate superiors to report directly to Deputy Chief Kirby. Kirby had given Richardson permission to initiate the investigation, and Richardson had established a rapport with Kirby. After the reorganization, the investigation was no longer in Kirby's jurisdiction. The new Deputy Chief, Abernathy, instructed Richardson to report through Sergeant Lockhart and Captain Xander. Richardson's colleagues reported that he was unhappy with this new development, preferring the independence from immediate supervision that he had enjoyed under Kirby. Some of Richardson's colleagues considered the new system to be an improvement, citing an insistence on long-term planning and more efficient use of resources.

The reorganization was recommended by Chief Powell and approved by the Capitol Police Board. Chief Powell testified that the reorganization was related to personnel matters and internal functioning of the Capitol Police. Capitol Police officials concerned with the reorganization, including Deputy Chief Kirby who lost jurisdiction, testified that it was unrelated to the drug investigation. The Special Counsel, while expressing no view as to the appropriateness of the reorganization, notes that the evidence suggests that problems existed within the Police Department which the reorganization could reasonably have been designed to address.

Not one witness testified that the purpose of the reorganization was to stop or obstruct the drug investigation. Richardson and Bennett implied such a link in their 1981 letter to the Capitol Police Board, but made no such allegation at their depositions. Richardson testified that he believed that the drug investigation was terminated after the reorganization out of spite for Kirby, who initially authorized the drug inquiry. But Richardson did not indicate that he thought the reorganization had been brought about for the purpose of terminating the investigation. Bennett specifically testified that he didn't know why the reorganization was ordered. He said:

"It could be because of manpower. You know, we've got more officers now that we had back then, and you're talking eleven, 1,200 officers. I guess the Chief of Police Board felt it was necessary to make another Deputy Chief. I have no idea."

Finally, all participants in the 128 C Street investigation agreed that no one ever attempted to restrict or obstruct it. Richardson testified that up until the time of his transfer, Chief Powell and Deputy Chief Abernathy had always expressed support for the investigation, and had never obstructed it in any way. Chief Powell testified that the Police Board supported the investigation. He said the Senate Sergeant-at-Arms was disappointed that the investigation did not lead to arrests for distribution, but that the Board expressed no other dissatisfaction.

Thus, there were credible reasons for the reorganization other than the drug investigation; no one testified that the reorganization was brought about for the purpose of terminating the drug investigation; and the drug investigation itself received the support of the police hierarchy, both before and after the reorganization occurred.

B. REASSIGNMENT OF RICHARDSON

It has been alleged that Officer Richardson's transfer was part of an effort to stymie the 1980 drug investigation and to block any follow-up to that investigation. Richardson was transferred over his vigorous protests that his participation in the drug investigation was necessary to its success. He came to believe that the reason for his reassignment was a desire to scuttle the drug investigation, because, as he told a colleague, he was "getting close to something."

The evidence does not indicate that Richardson's transfer was for the purpose of frustrating the investigation. In particular, the Special Counsel finds no evidence that the reassignment was ordered to prevent the discovery of drug use by persons in positions of authority or influence—e.g., Members of Congress or top staffers—the apparent "something" to which Richardson alluded.

These findings are based on three factors:

(1) There is no evidence whatsoever to suggest that, at the time of the transfer, the drug investigation was leading to any Member of Congress or professional staffer.

(2) The evidence indicates that the decision to transfer Richardson was based on his superior's assessment of personnel issues, not on a desire to curtail the investigation.

(3) The evidence indicates that Richardson's own conclusion that his reassignment was part of a cover-up rests on the failure of his superiors to discuss frankly with him the real reasons for his transfer.

Officer Bennett was also transferred, but at his own request. He testified that he requested the transfer because he believed he was not wanted in the Criminal Investigations Division. Bennett acknowledged, however, that Captain Xander, the head of the Division, asked him to stay.

1. Lack of evidence implicating persons in positions of authority

The Special Counsel's investigation uncovered evidence that there were some leads at the time of Richardson's reassignment which deserved to be pursued. However, there were never any leads involving any illegal drug activity by any Member of the House or Senate or by any professional staff member.

2. Legitimate reasons for the transfer

Richardson insists that his transfer could not have been a simple matter of routine police practice. Exceptions to the normal policy of transfer on promotion have been made in the past. He argues that there was ample reason to make an exception in his case, because his continued presence was necessary to the success of the investigation.

In fact, Richardson's superiors acknowledge that his transfer was not motivated solely by routine practice. They testified that the transfer of Richardson was a conscious personnel decision.

Chief Powell testified that he made the decision to transfer Richardson, based on the recommendation of Abernathy and the concurrence of Kirby. He testified that:

"[Abernathy] . . . felt that based on his conversation with the other members of the unit and their evaluations of Richardson's investigations, I think they felt that he overreacted and that the other members of the unit could do a more stable, intelligent, comprehensive investigation regarding whatever matters came to that unit."

Deputy Chief Abernathy testified that he recommended Richardson's transfer to Chief Powell, after consulting with Deputy Chief Kirby. Abernathy testified that he had heard from others working on the investigation that Richardson:

". . . had lost perspective of what our goals were and that he was more interested in finding anybody that had a marijuana cigarette on them, and that was easy to do because we had determined that at least in the grounds there were a lot of people smoking out there . . . they had some differences of opinion as to whether he had lost sight of what we were trying to do and had become consumed with it, that everyone was smoking marijuana and everybody ought to be locked up, and it was not progressing—it was felt that he was becoming a danger to the long-term program . . .

* * * * * * *

"He would not comply to the necessary control or the chain of command as reported by Sergeant Lockhart, and his coworkers became apprehensive about whether he had lost sight of the goals that we were interested as reported back sometime by them but more often by the sergeant.

"Question. And what goals were they?

"Answer. To determine and assess if there was distribution here and if so, where and how big and how to eliminate it.

* * * * * * *

"He started wearing bizarre clothing to relate to an undercover thing, a situation where he had worked here so long that everybody knew him. It became a joke to the people that he was watching.

"I mentioned the full frocked priest outfit with a golden cross. And, the workman's clothes and hard helmets that he was wearing with a gun sticking out where you could see it and the radio aerial sticking out.

* * * * * * *

"He had gotten off track. He had become a liability. He was an asset in the beginning because of his technical knowledge and his hard work and there is no denying that. He put in many many hours, but as it progressed he got off track, I think, and lost sight of what we were trying to do."

When asked why he recommended Richardson's transfer to the Patrol Division only two weeks after he had requested his permanent assignment to the Investigations Division, Abernathy said that his request to have Richardson, Bennett and Dirks permanently assigned to investigations was a way of opening three new personnel slots in the Investigations Division. He also testified that he was more concerned about Richardson's shortcomings as a sergeant than as a private. He testified that:

"Now as a sergeant he would be put in a supervisory position which would impact in a much more negative way and that is why the recommendation for the transfer was made."

Captain Xander, who was directly responsible for supervising Richardson, testified that he probably discussed the possibility of Richardson's transfer with Abernathy, and that he favored it:

"I had a couple of dealings with him. Just the way he conducted himself. It's hard to put my finger on it. The outlandish disguises that he was using to conduct this type of investigation. It's like he was Serpico and he was following the script for a movie. The outfits, the priest's uniform or a priest's clothing. He was wearing this clothing in the same place he was wearing a uniform before.

* * * * * * *

"I was not happy with the quality of [Richardson's] work nor the manner in which he did work. Richardson is not controllable. Therefore, especially in a vice operation, you can't have a person—you are out on your own so much. You don't have a supervisor looking over your shoulder. You are out for long periods of time, 14, maybe 15 hours. You would have to have people who he feels their judgment is good and you can trust. From the little bit that I worked with Richardson I don't think he met that criteria."

Richardson's colleagues corroborate the testimony of Richardson's superiors that they were receiving information which caused them to question his ability to direct the drug investigation. One of them testified:

"Richardson became almost blinded by the investigation. He lost all objectivity. He ate, slept, and drank the investigation. . . . I could see where he just became overdeveloped [sic] by the investigation."

The evidence developed by the Special Counsel indicates that the reason for Richardson's transfer was an assessment by his superiors of his work performance. The Special Counsel expresses no view on the merit of these judgments, but the evidence indicates that they were the basis for the transfer.

3. Lack of action and candor by Richardson's superiors

The evidence indicates that Richardson's superiors failed to take any decisive action to remedy the problems they saw, until Richardson's promotion provided them with a ready excuse to reassign him. None of his superiors discussed directly with Richardson any problems with respect to his performance even at the time of his transfer. Deputy Chief Abernathy testified:

"I complimented him, first, for his long, hard efforts and they were, and his contributions. And I took the easy way out, as I had told you before. We had discussed how Sergeant Richardson would fit as a sergeant in such an operation. It was my judgment he had lost perspective for what we were trying to do in the long term. I made a recommendation to the Chief that the standard policy of transfer upon promotion be instituted, and I discussed that with Kirby also. And it was an agreement that it would appear to be the best thing to do.

"In discussing it with Richardson, I saw no reason to unduly cause him more pain, because he was feeling pain. He had initiated through his efforts off duty to get something rolling in a narcotics area. He had

met with some degree of success. And he, in my judgment, came to feel that this was his baby and that he should be rewarded for the success that had culminated in the arrest of ten individuals.

"I, therefore, was very complimentary to him, not to the point of saying that I really want to keep you but the Chief wants you to go kind of stuff. But it was a convenient thing for me that he was promoted, because he had been considered to be getting off track, as far as our long term goals, and not cooperating properly with the others that he worked with, and that was as a private."

As a matter of effective management, more frankness toward Richardson regarding the perceived problems in his investigatory work would have been advisable, both prior to and at the time of his transfer. In the absence of such candor, Richardson was understandably left to speculate that his reassignment resulted from a desire on the part of his superiors to stop his investigation, as part of a cover-up of drug activity on Capitol Hill.

In summary, the Special Counsel finds no evidence to conclude that the transfer of Richardson was itself intended to curtail the drug investigation.

C. FAILURE TO FURTHER DEVELOP OUTSTANDING LEADS

While the evidence indicates that neither the Capitol Police reorganization nor Richardson's transfer were improper, the evidence also indicates that serious lapses occurred in the months that followed the reorganization and transfer. Between April and July 1980, seven officers were taken off the drug investigation. In their place, Deputy Chief Abernathy and Captain Xander assigned one investigator, Officer Mark Herbst, to devote only part-time to review and pursue leads developed by the Richardson-Bennett group. Abernathy and Xander claimed that other demands on their resources, lack of undercover personnel, and lack of information relating to drug distribution were factors in their failure to do more to develop the drug investigation.

However, the evidence clearly indicates that significant leads had been developed, including information regarding distribution. Those leads were simply not followed up. There was no investigation of Capitol Hill employees who had been identified as possible drug suppliers. There was no effort to use potential informants produced by the Richardson-Bennett investigation, or to develop others. There was no effort to pursue the allegations contained in signed statements implicating three Capitol Police officers in illegal drug activity.

The Special Counsel recognizes that successful pursuit of these leads would not have been easy. Drug dealers and users had become cautious after the 128 C Street arrests, and further investigation would have required time. Abernathy and some investigators who worked with Richardson considered some of their sources to be unreliable. Dirks described the investigation as at a dead-end. Jarboe testified that:

"Nobody knew really what to do at that point with the names we had left over. It was at a stalemate. It was stalled and there was no reason to keep somebody on the investigation."

Everyone who worked on the investigation agreed that no real progress was likely without the assistance of undercover police officers, and undercover agents are very difficult to place. One effort to place such an officer was aborted when the officer was recognized.

The evidence indicates that the difficulty of the task and the lack of knowledge about how to proceed were factors in the department's inaction. But these problems do not excuse the lack of response. There was sufficient evidence of drug activity to require further action on the part of the Capitol Police. The leads developed by the Richardson-Bennett group demanded further investigation. The failure to pursue these leads represented an abdication by the Captiol Police of its responsibility to investigate allegations of serious violations of law within its jurisdiction.

The Special Counsel has found insufficient evidence to conclude that this failure constituted a conscious or purposeful effort to cover up evidence of wrongdoing. It is possible, of course, that the Capitol Police were not eager to investigate leads pointing to three of its own officers. On the other hand, one of the persons arrested in connection with the 128 C Street investigation was the son of a retired Capitol Police captain. The evidence also indicates that at other times the Capitol Police has disciplined and dismissed officers for drug use.

In the absence of clear evidence of a deliberate cover-up, the Special Counsel believes that any further investigation into the reasons behind the failure of the Capitol Police force to discharge its duties properly lies with the Capitol Police Board. The Board should determine why these failures occurred. And the Board should take appropriate action to assure that they will not be repeated in the future.

The Special Counsel regards the failure to pursue allegations of drug use and drug distribution by members of the Capitol Police force itself as particularly serious and troublesome. Two witnesses gave statements that named, uniformed members of the police had offered to sell and, in one instance, actually sold marijuana. Two other witnesses named a third officer as a purchaser of illegal drugs.

The failure to investigate illegal activity within the police department gravely undermines the ability of the department to carry out its functions as a law enforcement agency. Illegal activity among police officers has a corrupting influence far beyond the illegal act itself. From this perspective, the failure of Capitol Police officers to pursue allegations of illegal drug activity by its own members is inexcusable. The Special Counsel recommends that the Capitol Police Board examine with particular care the failure by the Capitol Police force to investigate allegations concerning three of its officers.

V. Destruction of Documents

The Special Counsel received allegations of two separate incidents of destruction of Capitol Police documents relating to the subject of this drug investigation. Detective Michael Hubbard of the District of Columbia Metropolitan Police testified that in early July 1982, he asked to review Capitol Police records relating to drug offenses, in connection with an investigation he was then conducting. Hubbard said he was informed at that time that some records in connection with Capitol Police drug investigations, relating to innocent people, had

been destroyed. In addition, Capitol Police officers Richardson and Bennett informed the Special Counsel that they had heard that, at the time the Special Counsel requested documents from the Capitol Police in early August 1982, shredding occurred at police headquarters.

The Special Counsel has investigated both these incidents. Documents, including some related to drug investigations, were in fact shredded or discarded by Capitol Police on two or three occasions between 1980 and 1982. But the evidence is insufficient to conclude that materials of significant value to this Committee's work were destroyed.

A. THE 1980–1981 DESTRUCTION OF RECORDS

The first incidents in which documents were removed from the files occurred prior to 1982, before widespread press reports of alleged illegal drug activity on Capitol Hill, and before the Special Counsel began this investigation. The evidence indicates that materials relating to drug investigations were thrown out some time between late 1980 and late 1981. Captain Richard Xander testified that, on two occasions during this period, he threw into the trash selected records compiled in the course of drug investigations, including certain records from the drug investigation conducted by Richardson, Bennett, and their colleagues during the first half of 1980. Xander testified that he only discarded files that contained "information sheets," recording only name and identifying data such as address, birthdate and social security number. He testified that such files provided no indication why a person's name was included in Capitol Police records.

Xander admitted under oath that on one occasion he discarded records relating to Capitol Police officers and on a second occasion he destroyed such records relating to private individuals. He also admitted discarding a photograph album containing pictures of Capitol Police officers, some of whom were suspected of engaging in illegal drug activity, but most of whom were not. Xander claimed that this was a routine purging of vice files to protect individuals as to whom there was no evidence of wrongdoing.

Xander's description of the type of files discarded is corroborated by others. Sergeant Mark Herbst, who on at least one occasion assisted Xander in discarding documents, confirmed Xander's description of the records thrown out. A number of people associated with the 1980 drug investigation testified that information sheets were in fact created on individuals even when there was little or no evidence of drug activity by these persons. Testimony indicated that such information sheets contained only names and identifying data, without any indication of the reason for creating the records. Detective Elroy Shook, who participated in the 1980 drug investigation, discovered some records in question in a wastebasket after they had been removed from files and discarded. He testified that the records he saw contained only names and identifying data and no evidence of drug activity. Records turned over to the Committee included a number of such information sheets, containing no indication of their relevance to drug investigations.

Finally, and perhaps most significantly, Sergeant Richardson, who played a major role in the 1980 drug investigation, testified that he removed copies of all significant files from the 1980 investigation at the time of his transfer. He turned his own records over to the Com-

mittee. With minor exceptions, all records that Richardson provided were also turned over in response to the Committee's request to the Capitol Police.[3] Specifically with regard to its officers, the Capitol Police provided investigative records relating to all those officers about whom Richardson recalled receiving substantial evidence of illegal drug use. The Capitol Police provided the three most significant documents relating to police officers—two statements from witnesses who alleged that uniformed officers had offered to sell or had sold marijuana, and two statements alleging that a uniformed officer had purchased illegal drugs.

In sum, the Special Counsel found no evidence that Capitol Police files octnaining substantive evidence of illegal drug activity were destroyed in the incidents that occurred in late 1981 and early 1982.

This finding does not conclude the matter, however. According to Xander, he destroyed some material when he was assembling files in response to a request by the Chairman of the Capitol Police Board to review drug-related records.

Xander testified that, in late 1980 or 1981, he was instructed by the Chief of Police to collect certain drug records for Senate Sergeant at Arms Howard Liebengood, then Police Board Chairman, who wished to examine them.[4] Xander testified that he did assemble the files, but before giving them to the Chief of Police for submission to Liebengood, he destroyed information sheets relating to police officers and the book of photographs including Capitol Police suspects. Xander said that he destroyed these items in order to protect the careers of the officers involved. He claimed that these records contained no allegations or indication why the officers' names were included in the drug files, that the records should not have been created in the first place, and that they "should never . . . be shown to anyone outside of the police agency." He also described his action in purging the files in this manner as "proper police procedure."

One sheet containing only the name and identifying data of a police officer was included in the files turned over to the Special Counsel by the Capitol Police. When asked why he did not destroy all such information sheets, Xander said that in order to protect himself he had left an example of the type of files he had destroyed.

Xander testified under oath that after discarding the files, he informed Chief Powell that he had done so, and Chief Powell expressed his approval. Xander testified as follows:

"*Question.* Did you inform the Chief of Police when you turned over these records that you had removed some of them?

"Answer. Yes, ma'am.

"*Question.* Did you tell him what you had removed?

"Answer. Yes, ma'am.

"*Question.* Did he respond to that in any way?

"Answer. He concurred in my judgment."

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[3] There is some disagreement whether Richardson took files without leaving copies with the Caiptol Police. If so, this could account for discrepancies between the materials provided by Richardson and the police. In any event, the Capitol Police produced all the significant records that Richardson turned over to Committee.

[4] Other evidence indicates that Liebengood's requests to examine such records came in response to the Richardson-Bennett July, 1981 letter to the Police Board regarding their investigation.

Powell testified that Abernathy and Xander informed him that sometime in the past Xander had discarded some files containing the names of persons as to whom there was no evidence of wrongdoing. But Powell stated under oath that he had no recollection of any destruction of any documents at the time of Senate Sergeant at Arms Liebengood's request to review drug related records. Powell testified as follows:

"*Question.* Did Captain Xander ever tell you that he had destroyed or discarded some files prior to turning them over to you to show to Senate Sergeant at Arms Liebengood?

"Answer. I don't think so. He said that he had—I remember he had removed—included in the files that he had removed were some police officers also, but there was no evidence, other than just their names.

* * * * * * *

"*Question.* But do you recall being informed that any of the files had been destroyed or discarded at the time of the request to review them by Mr. Liebengood?

"Answer. I don't think so.

"*Question.* Well, as far as you know then, was Senate Sergeant at Arms Liebengood shown all of the Capitol police's narcotics files?

"Answer. I think so. Yes, ma'am. In other words, if they weren't, I didn't know about it; and I still don't. I think he was shown everything."

The Special Counsel's mandate—to investigate allegations of illegal drug activity and any cover-up of such activity—is satisfied by the conclusion that the evidence does not prove that the records in question contained substantive evidence of illegal drug activity.

However, serious questions are raised by the destruction of police records—even records relating to innocent people or records which should not have been created in the first place—by Capitol Police under orders to assemble whatever records exist at the request of and for review by the Chairman of the Capitol Police Board. Grave questions are also raised by the conflicting testimony of Lieutenant Xander and Police Chief Powell over whether Powell was informed of the destruction, and at least by implication condoned it.

In addition, the fact that some, but not all, of the documents identifying police officers were destroyed suggests the possibility of a motivation to protect certain officers out of friendship or other special concerns.

Since these issues are outside the purview of this investigation under H. Res. 12 and H. Res. 518, the Committee should refer this matter to the Capitol Police Board for review and appropriate disciplinary action.

B. THE AUGUST 1982 DESTRUCTION OF RECORDS

The evidence developed reveals a second incident in which documents were destroyed. That destruction occurred around early August, 1982, at about the time that the Special Counsel wrote Chief of Police Powell requesting documents relevant to this Committee's investigation.

Several witnesses acknowledged that documents were shredded at about the time of the Special Counsel's August, 1982 request. Witnesses with direct knowledge of the destruction testified that the documents were unrelated to the Committee's request.

Lieutenant Robert Howe testified that he had personally destroyed these documents. He testified as follows:

"*Question.* Lieutenant Howe, was there ever any time last summer or throughout the calendar year 1982 when you yourself, personally destroyed any United States [Capitol] Police documents?

"Answer. Sure, yes.

"*Question.* When did that occur?

"Answer. I can't recall the date on that. I can give you some things that were happening about that time. Bruce Johnson's reports were all on television about that time.

"*Question.* You are referring to Bruce Johnson, the reporter for television station WDVM?

"Answer. I guess that is the station. I am not sure.

"*Question.* But he is a television reporter; is that correct?

"Answer. Yes, he is.

"*Question.* And what were his reports relating to at that time?

"Answer. Drugs and sex on Capitol Hill.

"*Question.* What were the documents that you were destroying at that time?

"Answer. They were old files; five or six years old, maybe even older than that; that had been in the process of renewing and updating files these things had been placed in boxes and stored in closets, and we had run out of space, so I took some of the older files, and they were such things as morning reports; the Chief's morning reports; special operations unit recall rosters, general information that is of no worth at this point.

"*Question.* Did any of these files, documents relate to narcotics investigations or investigations relating to sexual conduct?

"Answer. No, ma'am.

* * * * * * *

"*Question.* Were you destroying these documents at anyone's instructions??

"Answer. No, I wasn't. I was just trying to create room for other things that we had to store.

"'*Question.* So did you initiate this project yourself?

"Answer. Yes, I did.

"*Question.* Did you ask anyone before you did it whether it was all right to destroy these documents?

"Answer. Not that I recall."

Officer Theresa Hanbury and Sergeant Karen Magee, who assisted Howe in shredding the documents, supported H we's testimony that the records destroyed did not relate to the subjects of the Special Counsel's request. Officer Hanbury and Sergeant Magee gave these examples of the type of documents shredded: copies of letters of commendation from the Chief of Police to officers under his command, letters requesting and responding to requests for souvenir Capitol Police uniform patches, and requests by tradespeople for after-hours access to make deliveries in Capitol buildings complex.

Lieutenant Howe testified that Captain Michael Boyle, an aide to Chief Powell, instructed him to stop because Boyle feared that the shredding might create suspicion since it coincided with the start of this Committee's investigation.

The Special Counsel received no evidence that contradicted the evidence provided by Howe, Hanbury, and Magee.

The Special Counsel did receive hearsay innuendo that the documents destroyed might have been relevant to the Committee's investigation. These allegations appear to have the same source, Deputy Chief Kirby. When questioned under oath, Kirby did not have a basis to contradict the testimony of the three officers, and in fact denied knowledge of any shredding.

Specifically, Richardson and Bennett reported that, in early August 1982, Deputy Chief Kirby informed them that materials were being shredded in police headquarters. Here is an excerpt of Bennett's testimony:

"*Question.* Do you know anything about the destruction of shredding of any files?

"Answer. Just on hearsay.

"*Question.* All right. And could you tell us what you have heard about that.

"Answer. Just that—who was it? Captain Boyle, and, if I'm not mistaken, Deputy Chief Abernathy, and a couple of hours—two nights of shredding paperwork, once they found out they had to bring the files in for all the drug arrests for five years.

"*Question.* Now from whom did you hear that?

"Answer. From several different people.

"*Question.* And can you name any of the individuals?

"Answer. I'd rather not.

* * * * * * *

"*Question.* I am going to ask you again who told you that documents were being shredded in response to this Committee's request?

"Answer. There were several different people and some I can remember and some I cannot.

"*Question.* Who can you remember?

"Answer. I think that one was Deputy Chief William Kirby.

"*Question.* Anybody else?

"Answer. No, not to my knowledge.

"*Question.* Is that all you can recall?

"Answer. You know, rumors float around and I have heard comments from 15 or 20 different people right on down to a private. But like I say, rumors float."

Deputy Chief Abernathy testified that Kirby also told him about the shredding. Here is Abernathy's testimony:

"*Question.* Do you have any other information about destruction or discarding of files?

"Answer. There was the allegation that there were files being shredded at the time that the Committee had asked for files. I wasn't involved in that other than to inform the Chief that people were saying that and that whatever was being shredded and he assured me that it was nonrelated whatsoever, that I recommended to him that they not shred anything for the time being because allegations were

being made that they were shredding files that related to what you were asking for.

"*Question.* From whom did you hear that allegations were being made that Capitol Police were shredding documents the Committee was asking for?

"Answer. Kirby.

"*Question.* OK. And what exactly did Kirby tell you about that?

"Answer. He said, the Chief better be careful. He has those people back there shredding stuff and no telling what it is, but it could be, you know, it is one of those crappy deals. That is the reason I went and told the Chief. I said, I do not care what you are shredding, you had better stop shredding because Kirby is insinuating that it is related."

In testimony to this Committee, Deputy Chief Kirby denied that he observed any shredding—late-night or otherwise—of drug investigation-related documents and denied ever telling anyone about such shredding. He testified:

"*Question.* I want you to think now specifically about those two or three weeks following this committee's request of last July or August for documents from the police department. Did you have any conversation with Sergeant Richardson around that time about the shredding of documents or other destruction of documents?

"Answer. No, at no time did I talk about shredding of particular documents to no one.

* * * * * * *

"*Question.* Did you talk about shredding of any documents in general? For example, did you remark to anyone that people had been shredding in the police department lately?

"Answer. Well, that's general. Like I just was telling you about the computer, we all kid about it, since we got those computers in the last six or eight months, how we have to shred things, and that might have been the comment, because we all have to carry it out in big bags behind the building for the trash man to pick it up afterwards.

"*Question.* I understand that the police department does a certain amount of shredding.

"Answer. Yes.

"*Question.* But did you remark to Sergeant Richardson or anyone else that there had been a lot of shredding going on?

"Answer. No.

"*Question.* Do you recall making such a remark?

"Answer. No.

"*Question.* Do you recall ever remarking that people had been shredding at the police department or at police headquarters late at night?

"Answer. No, see, because, like I say, I usually leave to go home around 5, 6 or 7 o'clock. I hardly ever am later than that now.

"*Question.* So you wouldn't know?

"Answer. No, I wouldn't know what they do in nighttime. I couldn't say, you know.

"*Question.* Particularly focusing on the period of July and August of last year, do you recall remarking to anyone that there was a lot of shredding going on——

"Answer. No.

"*Question* [continuing]. Or nighttime shredding going on at the police department?

"Answer. No."

Kirby did testify, however, that at about the time of the Committee's request for documents he overheard officers Hanbury and Magee discussing how long records should be retained before discarding them. This overheard conversation is consistent with reports of Howe, Hanbury and Magee that they destroyed records which were several years old, as a matter of routine.

It is likely that Kirby, who had no independent knowledge of what materials were being shredded, is responsible for initiating the rumor that documents were destroyed at the time of the Special Counsel's request, with the implication that the destroyed documents were related to that inquiry. There is serious doubt about the credibility of Kirby's testimony denying awareness of the shredding and denying that he told anyone about it. Abernathy, Richardson and Bennett said that Kirby informed them of the shredding. It is significant that Richardson and Bennett, who expressed preferences for working for Kirby as opposed to Abernathy, in this instance corroborated the testimony of Abernathy rather than Kirby.

The timing of the document shredding is obviously suspicious. However, the evidence reveals only innuendo to suggest that the shredding by Howe and his colleagues was other than what they claimed—the elimination of old documents unrelated to this drug investigation to create space for more recent records.

Here again, the Special Counsel's mandate is limited to the investigation of illegal drug activity and the cover up of the investigation of such activity. Conflicts in testimony involving Deputy Chief Kirby, Deputy Chief Abernathy, Sergeant Richardson and Officer Bennett raise questions beyond the scope of this investigation, which should be referred to the Capitol Police Board for appropriate disciplinary action.

VI. The Future of Drug Enforcement on Capitol Hill

The evidence obtained during this investigation demonstrates that, during the period examined, the Capitol Police did not have the capacity to conduct a serious investigation of allegations that criminal drug laws were being violated on Capitol Hill. The response of the Capitol Police to evidence of illegal drug activity within its jurisdiction falls far short of what should be expected of a professional police force.

The Capitol Police Board, the congressional leadership, and ultimately the Congress itself must consider what the role of the Capitol Police should be. The Capitol Police are among the 30 largest police forces in the nation. Are the Capitol Police to function merely as a protective force, similar to private security services, solely to protect Members of Congress, Congressional employees and Capitol buildings and grounds? Or are they to perform all the functions of a typical police force, including investigating any criminal act or allegation of criminal activity occurring within their jurisdiction? Defining the proper Capitol Police function—and the attendant oversight of that activity—within a national legislative community and enclave is

neither simple nor easy. Nor is it the responsibility of the Special Counsel or the Committee on Standards of Official Conduct.

But this investigation plainly reveals serious shortcomings of the Capitol Police in the area of criminal investigations. Two choices exist:

The Capitol Police could strengthen their own capacity. Such an effort would require the Capitol Police Board and the congressional leadership to make a searching review of the personnel and practices of the Capitol Police with respect to criminal investigations, including drug investigations, with a view to making sweeping changes. Such changes would have to be accompanied by a clear mandate to pursue criminal investigations with the same vigor applied to Capitol Police protective functions, and a system of oversight to protect individual rights and institutional interests.

Alternatively, the Capitol Police Board could delegate responsibility for drug and other criminal investigations requiring more than routine action to another law enforcement agency. It appears that the Capitol Police Board has the authority to do this, pursuant to its authority under 40 U.S.C. § 212a to authorize the Metropolitan Police to make arrests on and police the Capitol grounds. But this is a delicate decision, involving constitutional relationships among branches of government, and it requires the attention of the leadership of both Houses.

The Special Counsel expresses no view on which alternative, or variations, should be chosen, but recommends that the Committee refer this matter to the leadership of the House and Senate. The Capitol Police force is composed of hundreds of dedicated and committed individuals. These men and women serve the House and Senate with dignity, pride and a deep sense of responsibility. They are entitled to have their mission clearly defined and to be properly trained to fulfill that mission.

Respectfully submitted.

JOSEPH A. CALIFANO, Jr.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT,
Washington, D.C., November 16, 1982.

Hon. HOWARD H. BAKER, Jr.,
Majority Leader, U.S. Senate,
Washington, D.C.

DEAR SENATOR BAKER: House Resolution 518, which was passed by the House on July 13, 1982, authorized this Committee to conduct an investigation of alleged improper or illegal sexual conduct by Members, officers, or employees of the House and of alleged illicit use or distribution of drugs by Members, officers, or employees of the House. In addition, H. Res. 518 authorizes the Committee to include within the scope of its inquiry any matters "relevant to discharging its responsibilities pursuant to [H. Res. 518] or the Rules of the House of Representatives."

The Committee has received allegations that two investigations conducted by the U.S. Capitol Police into matters that fall within the scope of H. Res. 518 may have been prematurely terminated.

First, in early 1980 the Capitol Police conducted an investigation into drug activity among certain Hill staff which resulted in the arrest of several lower level Senate employees for the use of marijuana. This Committee has received allegations from officers involved with that investigation that information was developed at that time concerning possible use or distribution of illicit drugs by personnel of the House of Representatives. According to the allegations made to the Committee, this information was not properly pursued at the time. Second, the Capitol Police conducted an investigation in January and February of 1982 into the events surrounding the discharge of a House page. Questions have also been raised as to whether the January-February 1982 investigation was properly pursued.

At this time, we have no basis whatsoever to assess the accuracy or inaccuracy of these allegations. Neither the Special Counsel to this Committee nor the Committee has reached any conclusions as to whether these allegations have merit or not. This Committee has concluded, however, that the Committee should investigate these allegations as part of its responsibilities under H. Res. 518. In particular, this Committee feels obliged to investigate: (1) whether the conduct of the employees of the House who serve as Capitol Police officers violated any law or applicable standard of conduct with respect to matters covered by H. Res. 518; and (2) whether the Capitol Police have information that bears on the matters covered by H. Res. 518.

The jurisdiction of this Committee extends only to the conduct of Members, officers, or employees of the House of Representatives. The Capitol Police are supervised by the Capitol Hill Police Board, consisting of the Sergeant at Arms of the House of Representatives, the Seregant at Arms of the Senate, and the Architect of the Capitol. The Capitol Police have approximately 1200 officers. Approximately 650 of these officers are employees of the House of Representatives; approximately 550 are employees of the Senate.

The investigation which this Committee believes is necessary will entail review of the conduct of Capitol policemen who are employees of the Senate. Further, any such investigation may uncover evidence bearing on the conduct of other employees of the Senate. In any event, such an investigation into the Capitol Police conduct of the two investigations identified above will require questioning Senate employees, and may also require examination of documents in the possession of Senate employees or Senate offices. Because these matters are outside the jurisdiction of our Committee, we would like to establish a joint cooperative arrangement with the Senate that will allow the investigation to proceed while respecting the jurisdiction of the House and of the Senate.

We are prepared to work with the Senate in whatever way would be appropriate. We are also prepared to carry out the investigation utilizing our Special Counsel's investigative staff and to report to the Senate and the Senate Select Committee on Ethics any information that we acquire bearing on matters that fall within the Senate's jurisdiction.

Please let me know how the Senate would like to proceed on this matter.

Sincerely,

LOUIS STOKES,
Chairman.

U.S. SENATE,
OFFICE OF THE MAJORITY LEADER,
Washington, D.C., November 23, 1982.

Hon. LOUIS STOKES,
Chairman, Committee on Standards of Official Conduct, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have received your letter in which you request that the Senate and the House devise a working relationship that would respect the jurisdiction of both houses in order to investigate the U.S. Capitol Police conduct of two previous investigations.

In light of the allegations that your Committee has received, the Senate agrees that the investigation which you propose should be carried out. As you recognize, the Senate and the Senate Select Committee on Ethics have exclusive jurisdiction with respect to the conduct of officers and employees of the Senate. Under the circumstances of this case, however, it would be difficult and counterproductive to initiate separate House and Senate investigations into the matters you have identified.

We believe the arrangement that would best serve the interests both of the House and Senate would be for your Committee to pursue the the investigations you outlined, utilizing the investigative resources of your Special Counsel's office. For this purpose, the office of your Committee's Special Counsel may question employees of the Senate and request documents of Senate employees and offices relative to Capitol Police conduct of the two investigations in question.

To the extent that the investigation develops any information bearing on conduct of employees of the Senate, such information should be forwarded to Senator Malcolm Wallop, Chairman of the Select Committee on Ethics; Senator Howell Heflin, Ranking Minority Member of that Committee; and to me.

It is my understanding that this arrangement is acceptable to your Committee. Thank you for your cooperation in this matter.

Sincerely,

HOWARD H. BAKER, JR.

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